FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Application No. 7841/2006 IN Second Appeal No. 252/2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. Vasanti A. Naik, J.
DATE : 14th June, 2007.

By this Civil Application,the applicants/ appellants seek modification of the order passed by this Court on 25.07.2003.

The applicants, in effect, seek permission to deposit the balance decretal amount so that the property attached by the Executing Court is released.

It is not in dispute that the respondents had filed R.M.J.C. No.2/1994 before the executing Court for execution of the decree for grant of mesne profits. The property belonging to the appellant was

attached in the execution proceedings. The appellants had deposited an amount of Rs. 12,00,000/- (Rupees Twelve Lacs only) in the trial Court on 21.10.2004 in pursuance of the interim orders passed by this Court.

By this application, the applicants seek permission to deposit the balance decretal amount in the trial Court for the purpose of getting the attached property released.

It was the case of the applicants that the balance decretal amount was computed at Rs.12,34,280/- (Rupees Twelve Lacs Thirty Four Thousand Two Hundred Eighty only) along with Simple Interest @ 6% per annum thereon. The counsel for the appellants had, therefore, expressed the desire of the appellants to deposit an amount of Rs.13,00,415/- (Rupees Thirteen Lacs Four Hundred Fifteen only) in the trial

Court within a period of four weeks.

The counsel for the respondents, on instructions from the respondents, however, disputed that the applicants were liable to pay only Rs.13,00,415/- (Rupees Thirteen Lacs Four Hundred Fifteen only) and had submitted that the applicants were liable to pay Rs.19,72,955/- (Rupees Nineteen Lacs Seventy Two Thousand Nine Hundred Fifty Five only) in terms of the decree.

Since the parties did not agree upon the 'amount' which was actually due and payable, this Court had directed the executing Court to decide as to what amount is payable by the appellants to the respondents in view of the decree passed by the appellate Court.

The executing Court has passed an order on 13.04.2007,below Exh.1 and Exh.57 and has arrived at a conclusion that the

applicants are liable to pay an amount of Rs. 19,34,505/- (Rupees Nineteen Lacs Thirty Four Thousand Five Hundred Five only) to the respondents as on 13.04.2007.

In view of the aforesaid order/report dated 13.04.2007, Shri R.K. Deshpande, the learned counsel for the applicants, submits that the applicants are ready to deposit the amount of Rs.19,34,505/- (Rupees Nineteen Lacs Thirty Four Thousand Five Hundred Five only) in the trial Court within a period of four weeks from today without prejudice to their right to challenge the aforesaid calculations at a subsequent point of time.

Shri Brahme, the learned counsel for the respondents, has no objection if the attached property of the applicants is released on the deposit of the aforesaid amount by the applicants in the trial Court.

Hence, the applicants are hereby

permitted to deposit an amount of Rs. 19,34,505/- (Rupees Nineteen Lacs Thirty Four Thousand Five Hundred Five only) in the trial Court within a period of four weeks from today.

In case, the applicants so make the aforesaid deposit in the trial Court within the stipulated time, the executing Court is hereby directed to release the property attached in the R.M.J.C. No.2/1994.

The respondents are at liberty to make an application for withdrawal of the amount, if deposited by the applicants in the trial Court. In case, the respondents fail to make any application for withdrawal of the amount so deposited by the applicants in the trial Court within a period of two months from today, the trial Court should place the aforesaid amount in a Fixed Deposit Account of a nationalised Bank initially for a period of

three years and the same should be renewed thereafter from time to time during the pendency of the Second Appeal.

The Civil Application is allowed on the aforesaid terms and disposed of.

JUDGE

APTE